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16
17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE DISTRICT OF ARIZONA**

19 **MACAELA CASHMAN,**

20
21 **Plaintiff,**

22 **vs.**

23 **ALLIED INSURANCE and AMCO**
24 **INSURANCE COMPANY,**

25 **Defendants.**

Case No. CIV-05-415-TUC-RCC

FINAL ORDER AND JUDGMENT
APPROVING CLASS ACTION
SETTLEMENT AND DISMISSING
CLASS ACTION WITH PREJUDICE

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WHEREAS, the Parties have entered into a Stipulation of Class Action Settlement filed October 29, 2007, together with related exhibits (collectively, the "Stipulation"), to settle the class action claims asserted in *Cashman v. Allied Insurance, et al.*, United States District Court, District of Arizona, Case No. CIV-05-415-TUC-RCC pending before this Court together with the class action claims pending in other forums as set forth in the Stipulation; and

1 WHEREAS, the Court entered an Order dated November 8, 2007 (the "Preliminary
2 Approval Order"), certifying a class in this action in connection with the preliminarily
3 approved settlement; ordering notice to potential class members through Mail Notice and
4 Publication Notice; providing those persons with an opportunity either to exclude
5 themselves from the Settlement Class or to object to the proposed settlement; and
6 scheduling a Fairness Hearing;
7

8 WHEREAS, for purposes of certifying the Settlement Class and considering the
9 approval of the proposed settlement, the Court is exercising concurrent jurisdiction with the
10 District Court of Nueces County, Texas in the case styled *Yolanda Garza v. Nationwide*
11 *Mutual Insurance Company, et al.*, District Court of Nueces County, Texas, 148th Judicial
12 Circuit, Cause No. 02-06322-E, (the "Garza Action"), which entered a Final Order and
13 Judgment Approving Class Action Settlement and Dismissing Class Action with Prejudice
14 (the Garza "Final Judgment") on March 6, 2008; and
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16 WHEREAS, the Court held a Fairness Hearing on March 17, 2008, to determine
17 whether to finally approve the proposed settlement; and

18 WHEREAS, the Parties have complied with the Preliminary Approval Order and the
19 Court finds that the Stipulation is fair, adequate, and reasonable, and that it should be finally
20 approved.

21 NOW THEREFORE, based on the submissions of the Parties and Settlement Class
22 Members, any objections, any testimony adduced at the Fairness Hearing, the pleadings on
23 file, and the argument of counsel, the Court hereby finds, and it is hereby ORDERED,
24 ADJUDGED AND DECREED, as follows:
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1 **1. Incorporation of Defined Terms.** Except where otherwise noted, all capitalized
2 terms used in this Order and in Appendix "A" hereto shall have the meanings set forth in
3 Appendix "A" hereto.

4 **2. Jurisdiction.** For the purposes of approving the Stipulation, granting final
5 certification of the Settlement Class, settling and releasing all claims arising out of the
6 transactions alleged in the action or the Released Claims, and dismissing this action on the
7 merits and with prejudice, the Court exercises concurrent jurisdiction with the court
8 presiding over the Garza Action. The Court has reviewed the Final Judgment entered by the
9 court presiding over the Garza Action, and finds that it is consistent with the final judgment
10 being entered by the Court in this action.

11 **Final Class Certification**

12 **3. Final Settlement Approval.** As established below, the terms and provisions of the
13 Stipulation, including all amendments and exhibits thereto, have been entered into at arms'
14 length and in good faith and are hereby fully and finally approved as fair, reasonable and
15 adequate as to each of the Parties, including the Settlement Class, and are consistent and in
16 compliance with all requirements of due process, the Federal Rules of Civil Procedure, and
17 any other applicable rules or law and are in the best interests of the Parties and the
18 Settlement Class Members. The Parties and their respective counsel are hereby directed to
19 implement and consummate the Stipulation according to its terms and provisions.

20 The Court has considered the correspondence attached as Exhibit I to the Declaration of
21 Joel K. Botzet on Behalf of the Settlement Administrator, Rust Consulting, Inc. (the "Settlement
22 Administrator's Declaration"), together with the submission of counsel and finds that there is
23 either no pending objection, and if the correspondence were intended to be an objection, it fails
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1 to raise any issues that would call into question the fairness, adequacy, or reasonableness of the
2 settlement terms and is therefore overruled.

3 Specifically, the Court finds that the Stipulation is "fair, reasonable, and
4 adequate" pursuant to applicable rules and case law. *See* Rule 23, *Fed.R.Civ.P.*; *Stanton*
5 *v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003 (citing *Hanlon v. Chrysler Corp.*, 150
6 F.3d 1011, 1026 (9th Cir. 1998)); *E.g., Officers for Justice v. Civil Service Commission*,
7 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied*, 459 U.S. 1217 (1983); *Marshall v.*
8 *Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977); *In re Warner Communications*
9 *Securities Litigation*, 618 F.Supp. 735, 740 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir.
10 1986).

11 To determine that the Stipulation is fair, reasonable, and adequate, the Court
12 applied the following factors when reviewing the Stipulation: (1) the strength of
13 plaintiffs' case; (2) the complexity, expense, and likely duration of the litigation; (3) the
14 risk of maintaining class action status throughout the trial; (4) the amount offered in
15 settlement; (5) the stage of the proceedings, including the status of discovery; (6) the
16 respective opinions of the participants, including class counsel and class representatives;
17 and (7) the reaction of the class members. *Officers for Justice*, 688 F.2d at 625.

18
19
20 The claims resolved by this settlement raise complex issues involving an extensive
21 factual background and a variety of legal issues. The Parties have litigated four separate
22 class actions over a number of years, and absent this resolution are likely to continue
23 litigating these issues for an extended period of time. Both sides obviously believe they
24 are correct on the merits of their claims and defenses, but each side has a difficult burden
25 to establish their positions and the outcome is far from certain for both sides.

26 The settlement provides for cash payments to Class Members with a reasonable and well-
suited claims process. The payments correspond to the challenged payment reductions, and

1 appear reasonably and fairly adjusted based upon the risks of the litigation. The recovery of
2 Class Members is also not reduced by an award of attorneys' fees and expenses since the
3 settlement provides for those items to be separately funded by Nationwide/Allied.

4 Moreover, notice of the proposed settlement was provided to over 100,000 Class
5 Members, to the U.S. Attorney General, and to the Attorney General and Insurance Department
6 offices of forty-five states. Published notice was also provided in three publications targeted to
7 reach Class Members with a collective circulation of approximately 2.7 million people. In
8 response to this extensive notice campaign, no substantive objection was submitted. The lack of
9 objection to the settlement thus further supports its approval.

10 Finally, the Parties and their counsel strongly support this settlement. After extensive
11 arms-length negotiations involving multiple class representatives and their counsel, a resolution
12 was arrived at with unanimous consent. The settlement will likewise serve the public interest by
13 bringing immediate relief to Class Members and resulting in the dismissal of four pending class
14 actions.

15 In sum, "there is an overriding public interest in settling and quieting litigation. This is
16 particularly true in class action suits. . . ." *Van Bronkhurst v. Safeco Corp.*, 529 F.2d 943, 950
17 (9th Cir. 1976). After careful review of the settlement, the submissions of the Parties, and the
18 record, the Court finds that the settlement is free from collusion and is fair, reasonable, and
19 adequate. Accordingly, the settlement set forth in the Stipulation is approved.

20 **4. The Settlement Class.** The Settlement Class that this Court previously certified in its
21 Preliminary Approval Order is hereby finally certified pursuant to Federal Rule of Civil
22 Procedure 23. The "Settlement Class" consists of:

23 All persons, and their medical providers, who were covered under
24 personal injury protection, medical payments, workers'
25 compensation, or other no-fault or first party medical expense
26 coverages pursuant to an insurance policy issued by a
Nationwide/Allied company or one of their affiliates in Covered
States: (a) who made an insurance claim to Nationwide/Allied
under one or more of the foregoing insurance coverages; (b) who

1 during the Class Period submitted, directly or indirectly, to
2 Nationwide/Allied charges for payment of medical bills that were
3 reviewed or audited; and (c) who received or were tendered
4 payment by Nationwide/Allied in an amount less than the full
amount charged under a policy where the applicable coverage
limits were not exhausted.

5 "Covered States" means and includes all states within the United
6 States, except the following excluded states: Delaware, Florida,
Hawaii, New Jersey, New York and Pennsylvania.

7 "Class Period" means the period from December 1, 1992 through
8 November 8, 2007.

9 Excluded from the Settlement Class are: (i) Nationwide/Allied,
10 any entities in which Nationwide/Allied has a controlling interest,
11 and all of their legal representatives, heirs and successors; (ii)
members of the judiciary; and (iii) any claims resolved and/or
discharged or released prior to November 8, 2007.

12
13 **5. Exclusions/Opt Outs.** A list of those persons or entities who have timely excluded
14 themselves from the Settlement Class (opt outs), and who therefore are not bound by this
15 Final Order and Judgment, is attached hereto as Appendix "C," which is incorporated herein
16 and made a part hereof for all purposes. The Court notes that the opt out list adopted in this
17 action is consistent with the opt out list adopted in the Garza Action.

18
19 **6. Federal Rule of Civil Procedure 23.** Under Federal Rule of Civil Procedure 23, the
20 requirements of class certification are divided into two subsections, Rules 23(a) and 23(b).
21 For a class to be certified, each of the four requirements of Rule 23(a), as well as one of the
22 four requirements of Rule 23(b) must be satisfied. As established below, the Court finds
23 that the requirements of the Federal Rules of Civil Procedure and any other applicable law
24 have been met.
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1 **7. Numerosity.** Rule 23(a)(1) requires that the members of the settlement class are so
2 numerous that joinder of all members is impracticable. Here, the Settlement Class contains
3 thousands of members. Thus, the numerosity requirement is satisfied.

4 **8. Commonality.** Rule 23(a)(2) requires that the claims or defenses of the class
5 representatives raise questions of law or fact common to the questions of law or fact raised
6 by the claims or defenses of each member of the settlement class. A common question is
7 one that when answered as to the named plaintiffs, is answered to the remaining class
8 members.
9

10 Here, the claims of the Class Representatives are uniform with respect to the claims of
11 the Settlement Class Members to the extent that they relate to Nationwide/Allied's alleged
12 practice of conducting medical bill review to determine appropriate charges and payments
13 for medical services. Thus, the commonality requirement is satisfied.

14 **9. Typicality.** Rule 23(a)(3) requires that the claims or defenses of the class
15 representatives are typical of the claims or defenses of each member of the settlement class.
16 The typicality requirement is satisfied if the class representatives demonstrate that their
17 claims have the same essential characteristics as those of the class as a whole.
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19 Here, the Class Representatives are either insureds of Nationwide/Allied or medical
20 providers for insureds holding a valid assignment. They therefore stand in the same position as
21 the Settlement Class Members vis-à-vis Nationwide/Allied. The claims of the Class
22 Representatives and the Settlement Class Members all seek to recover the difference between
23 medical charges and payments made for those charges under Medical Expense Coverage
24 benefits. Those claims likewise all challenge reductions based upon the medical bill review
25 process utilized by Nationwide/Allied. Thus, the typicality requirement is satisfied.
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1 **10. Adequacy of Representation.** Rule 23(a)(4) requires that the class representatives
2 and class counsel can fairly and adequately protect and represent the interests of each
3 member of the settlement class.

4 Here, the Class Representatives who were pursuing separate actions have come together
5 to evaluate the proposed settlement and deemed it fair, reasonable, and adequate. There is
6 therefore no indication of any conflict among the Class Representatives or between them and
7 the Settlement Class. The history of the four Lawsuits, and similar claims against other
8 insurance companies, demonstrates that the Class Representatives and their counsel have the
9 will and resources to pursue these actions. Each of the Plaintiffs' counsel has substantial
10 experience in class actions and insurance issues, which independently and collectively renders
11 them able and adequate counsel for the Settlement Class. Thus, adequacy of representation is
12 satisfied.

13
14 **11. Predominance.** Rule 23(b)(3) requires that the questions of law and fact common to the
15 class representatives and the members of the settlement class predominate over any questions of
16 law or fact affecting only individual members of the settlement class.

17
18 Here, the common issues of the Settlement Class predominate over individual issues.
19 The common core issues concern the allegedly improper submission of medical charges to a
20 medical bill review process and the resulting tender of payments by Nationwide/Allied in
21 amounts less than the full amount charged under a Medical Expense Coverage policy where the
22 applicable coverage limits were not exhausted. Thus, the predominance of common questions is
23 satisfied.

24
25 **12. Superiority.** Rule 23(b)(3) also requires that class representation is superior to other
26 available methods for the fair and efficient adjudication of the controversy. The matters

1 pertinent to these issues include: (a) the interests of members of the settlement class in
2 individually controlling the prosecution or defense of separate actions; (b) the
3 impracticability or inefficiency of prosecuting or defending separate actions; (c) the extent
4 and nature of any litigation concerning these claims already commenced; and (d) the
5 desirability of concentrating the litigation of the claims in the particular forums. Because
6 superiority is assessed in the context of a proposed class settlement, the Court need not
7 consider manageability issues that might be presented in this case. *See Amchem Prods., Inc.*
8 *v. Windsor*, 117 S. Ct. 2231, 2248 (1997).
9

10 Here, a class action is superior because, given the relatively small individual amounts in
11 controversy, the economic interests of the Settlement Class Members are better served through a
12 class action. Additionally, by concentrating the settlement notice and approval process in this
13 and the Cashman Action, the Parties have provided Class Members with consistent settlement
14 terms, notice, benefits, and administration process. This enhances the consistent and fair
15 treatment of Class Members, while minimizing the opportunity for confusion or conflicts. Thus,
16 a class action is the superior method for the adjudication of this controversy under the
17 circumstances presented.
18

19 **13. Notice Plan.** The Court finds that the Notice Plan, including distribution of the Mail
20 Notice and the publication of the Publication Notice, in accordance with the terms of the
21 Stipulation and this Court's Preliminary Approval Order, and as explained in the
22 declarations filed at or before the Fairness Hearing:

- 23 a) constituted the best practicable notice;
24 b) constituted notice that was reasonably calculated, under the circumstances,
25 to apprise Settlement Class Members of the pendency of the Lawsuits, their right to object
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1 or to exclude themselves from the proposed settlement and to appear at the Fairness Hearing
2 held by this Court, and their right to seek monetary relief as provided in the Stipulation;

3 c) was reasonable and constituted due, adequate, and sufficient notice to all
4 persons entitled to receive notice; and

5 d) met all applicable requirements of due process and applicable law.
6

7 **Other Provisions**

8 **14. Binding Effect.** The terms of the Stipulation and of this Final Order and Judgment
9 shall be forever binding on the Class Representatives and all other Settlement Class
10 Members, as well as their heirs, representatives, executors and administrators, successors
11 and assigns, and those terms shall have res judicata and full preclusive effect in all pending
12 and future claims, lawsuits or other proceedings maintained by or on behalf of any such
13 persons or entities, to the extent those claims, lawsuits or other proceedings involve matters
14 that were or could have been raised in this action or are otherwise encompassed by the
15 Release described in the next paragraph of, and attached as Appendix "B" to, this Final
16 Order and Judgment.
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18 **15. Release.** Upon the Effective Date, the Release attached hereto as Appendix "B"
19 ("Release") shall be valid and binding against the Class Representatives and all Settlement
20 Class Members who have not been recognized as excluded from the Settlement Class in
21 Appendix "C" of this Final Order and Judgment.
22

23 **16. Bar to Asserting Released Claims.** Upon the Effective Date, the Class
24 Representatives and all Settlement Class Members who have not been excluded from the
25 Settlement Class, whether or not they return a Claim Form within the time and in the
26 manner provided for, shall be barred from asserting any Released Claims against the

1 Released Parties, and such Class Representatives and Settlement Class Members shall have
2 released any and all Released Claims against the Released Parties.

3 **17. Permanent Injunction.** All Settlement Class Members who have not timely excluded
4 themselves from the Settlement Class (and therefore are not listed on Appendix "C" hereto)
5 are hereby permanently barred and enjoined from (a) filing, commencing, prosecuting,
6 intervening in, or participating (as a class member or otherwise) in any other lawsuit or
7 administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on,
8 relating to, or arising out of the claims and causes of action, or the facts and circumstances
9 relating thereto, in the Lawsuits and/or the Released Claims; (b) balance billing, collecting
10 or attempting to collect from, or taking negative credit action against, any Released Party
11 for any claims within the scope of the Released Claims; (c) organizing members of the
12 Settlement Class who have not been excluded from the Settlement Class into a separate
13 class for purposes of pursuing as a purported class action any lawsuit or administrative,
14 regulatory, arbitration, or other proceeding (including by seeking to amend a pending
15 complaint to include class allegations, or seeking class certification in a pending action)
16 based on, relating to, or arising out of the claims and causes of action, or the facts and
17 circumstances relating thereto, in the Lawsuits and/or the Released Claims; and (d) taking
18 any action inconsistent with the Release attached hereto as Appendix "B."

19 **18. Enforcement of Settlement.** Nothing in this Final Order and Judgment or any order
20 entered in connection herewith shall preclude any action to enforce the terms of this Final
21 Order and Judgment or the Stipulation.

22 **19. Attorneys' Fees and Expenses.** The Court approves a total collective payment of
23 attorneys' fees, costs, and expenses to Feazell & Tighe LLP, Freed & Weiss LLC, The
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1 Lakin Law Firm, P.C., and McNamara, Goldsmith, Jackson & Macdonald, P.C. in the
2 aggregate amount of \$7.8 million, as provided in the Settlement Stipulation and awarded by
3 the court in the Garza Action at the fairness hearing in that matter, which payment will be
4 separate from and will not diminish any Settlement Payments or other relief provided to
5 Settlement Class Members. Nationwide/Allied may fulfill its payment obligation as set
6 forth in the Stipulation or as otherwise agreed by the foregoing counsel and
7 Nationwide/Allied. Nationwide/Allied shall make payment of the foregoing amounts
8 awarded within thirty (30) days of the occurrence of the Effective Date, provided that
9 written escrow instructions have been received by Nationwide/Allied's counsel as required
10 in Section 10.01 in the Stipulation. This Court shall retain concurrent jurisdiction with the
11 court in the Garza Action regarding allocation of such amounts among Class Counsel, as
12 provided in the Settlement Stipulation.
13

14 **20. Incentive Awards.** The Court approves payment to the Class Representatives,
15 Yolanda Garza, Acuna, P.T., Gerald H. Bemis, Sr., D.C., Mark J. Eavenson, D.C., d/b/a
16 Multi-Care Specialists, P.C., and Macaela Cashman, in the amount of \$5,000.00 each as
17 compensation for their time and effort in connection with the litigation of this matter, as
18 provided in the Settlement Stipulation and awarded by the Garza Court at the fairness
19 hearing in that matter, which payment will be separate from and will not diminish any
20 Settlement Payments or other relief provided to Settlement Class Members.
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22 **21. No Other Payments.** Paragraphs 19 and 20 of this Final Order and Judgment cover,
23 without limitation, any and all claims for attorneys' fees and expenses, costs or
24 disbursements incurred by Class Counsel or any other counsel representing Class
25 Representatives and/or Settlement Class Members, or incurred by the Class Representatives
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1 and/or the Settlement Class Members, in connection with or related in any manner to this
2 action, the settlement of this action, the administration of such settlement, and/or the
3 Released Claims except to the extent otherwise specified in this Final Order and Judgment
4 and the Stipulation. Nationwide/Allied shall not be liable to the Class Representatives,
5 Class Counsel or the Settlement Class Members for any additional attorneys' fees or
6 expenses.
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8 **22. Modification of Stipulation.** The parties are hereby authorized, without needing
9 further approval from the Court, to agree to and adopt such amendments, modifications and
10 expansions of the Stipulation and all Exhibits thereto as (a) shall be consistent in all
11 material respects with the Final Orders and Judgments and (b) do not limit the rights of the
12 Settlement Class Members.

13 **23. Retention of Jurisdiction.** The Courts shall have exclusive and continuing
14 jurisdiction over the implementation, interpretation and execution of the Stipulation; of any
15 orders and this Final Order and Judgment entered by the Courts; and/or of the conduct or
16 the policies and procedures described herein, with respect to all parties hereto and all
17 beneficiaries hereof, including all Settlement Class Members.
18

19 **24. No Admissions.** Neither this Final Order and Judgment, nor the Stipulation (nor any
20 other document referred to herein, nor any action taken to negotiate, effectuate and
21 implement the Stipulation) is, may be construed as, or may be used as an admission or
22 concession by or against the Released Parties as to the validity of any claim or any actual or
23 potential fault or liability. Additionally, neither the Stipulation nor any negotiations,
24 actions, or proceedings related to it, shall be offered or received in evidence in any action or
25 proceeding against any party hereto or any of the Released Parties in any court,
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1 administrative agency or other tribunal for any purpose whatsoever, except to enforce the
2 provisions of this Final Order and Judgment and the Stipulation; provided, however, that
3 this Final Order and Judgment and the Stipulation may be filed and used in any action,
4 arbitration or other proceeding against or by the Released Parties to support a defense of res
5 judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or
6 reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or
7 similar defense or counterclaim.
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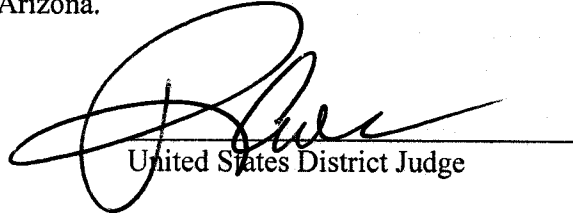
9 **25. No Representations Regarding Taxes.** The Court finds that the parties and their
10 counsel have expressed no opinions concerning the tax consequences of the settlement to
11 Settlement Class Members and have made no representations, warranties or other
12 assurances regarding any such tax consequences. No opinions, representations, warranties,
13 or other assurances shall be deemed to have been made by the parties or their counsel with
14 respect to any such tax consequences by virtue of the Stipulation or by effectuating the
15 settlement, and the parties and their counsel shall not be responsible or liable for any such
16 tax consequences that may occur.
17

18 **26. Dismissal of Actions.** This action, including all of the individual and class claims
19 included therein, is hereby dismissed on the merits and with prejudice against the Class
20 Representatives and all other Settlement Class Members, without fees or costs to any party
21 except as specifically provided in this Final Order and Judgment. Mark J. Eavenson, D.C.,
22 d/b/a Multi-Care Specialists, P.C., Acuna, P.T., and Gerald H. Bemis, Sr., D.C., are hereby
23 directed to dismiss with prejudice the Bemis Action and the Eavenson Action.
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25 **27. Continuing Jurisdiction.** Without affecting the finality of this Final Order and
26 Judgment, the Court, together with the court presiding over the Garza Action, reserves

1 continuing and exclusive jurisdiction over all matters relating to the administration,
2 implementation, effectuation and enforcement of this Final Order and Judgment.

3 Signed this 17 day of Mar., 2008, at the courthouse for the United
4 States District Court for the District of Arizona.

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7 United States District Judge
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APPENDIX "A":
1DEFINITIONS
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3 Except where otherwise indicated, all capitalized terms used in the foregoing Order and in
4 this Appendix "A" shall have the meanings set forth below.

5 A. **Bemis Action.** "Bemis Action" means *Gerald H. Bemis, Sr., D.C., et al. v. AMCO*
6 *Insurance Company, et al.*, Circuit Court, Third Judicial Circuit, in and for Madison
7 County, Illinois, Case No. 04 L 1006.

8 B. **Cashman Action.** "Cashman Action" means *Macaela Cashman v. Allied Property*
9 *and Casualty Insurance Company, et al.*, U.S. District Court for the District of Arizona,
10 Case No. CIV-05-415-TUC-RCC.

11 C. **Class Counsel.** "Class Counsel" means, collectively, the law firms of Feazell &
12 Tighe LLP, Freed & Weiss LLC, The Lakin Law Firm, P.C., and McNamara, Goldsmith,
13 Jackson & Macdonald, P.C.

14 D. **Class Member.** "Class Member" or "Settlement Class Member" means any Class
15 Representative and any member of the Settlement Class who does not validly and timely
16 elect exclusion from the Settlement Class as determined by the Courts, and each of their
17 respective heirs, trustees, executors, administrators, principals, beneficiaries,
18 representatives, agents, and present and former officers, directors, employees, insureds,
19 attorneys, contractors, predecessors, successors, parent companies, subsidiaries, divisions,
20 affiliates, and assigns, and/or anyone claiming through them or acting or purporting to act
21 for them or on their behalf.

22 E. **Class Period.** "Class Period" means the period from December 1, 1992 through
23 November 8, 2007.
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1 **G. Eavenson Action.** “Eavenson Action” means *Mark J. Eavenson, D.C., d/b/a*
 2 *Multi-Care Specialists, P.C. v. Allied Property and Casualty Insurance Company, et al.,*
 3 Circuit Court, Third Judicial Circuit, in and for Madison County, Illinois, Case No. 03 L
 4 1469.

5 **H. Effective Date.** The “Effective Date” shall be the date when each and all of the
 6 following conditions have occurred: (1) The Stipulation has been fully executed by the
 7 Parties and their respective counsel; (2) Preliminary Approval Orders have been entered by
 8 the Courts certifying the Settlement Class, granting preliminary approval of the Stipulation,
 9 and approving the forms of the Mail Notice, Publication Notice and Claim Forms, all as
 10 provided in the Stipulation; (3) The approved Notice Plan has been duly promulgated as
 11 ordered by the Courts; (4) The Courts have entered Final Orders and Judgments finally
 12 approving this Stipulation; and (5) The Final Orders and Judgments have become Final.

13 **I. Final.** “Final,” means that (a) the Final Orders and Judgments are final,
 14 appealable judgments; and (b) either (i) no appeal(s) have been taken as of the date on
 15 which all times to appeal therefrom have expired, or (ii) if an appeal(s) or other review
 16 proceeding(s) have been commenced, such appeal(s) or other review(s) are finally
 17 concluded and no longer are subject to review by any court, whether by appeal, petitions for
 18 rehearing or reargument, petitions for rehearing en banc, petitions for writ of certiorari, or
 19 otherwise, and such appeal(s) or other review(s) have been finally resolved in such manner
 20 that affirms the Final Order and Judgment(s) appealed from in all material respects.

21 **J. Garza Action.** “Garza Action” means *Garza v. Nationwide Mutual Insurance*
 22 *Company, et al.,* District Court of Nueces County, Texas, 148th Judicial Circuit, Cause No.
 23 02-06322-E.
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1 **K. Lawsuits.** "Lawsuits" mean collectively the Garza Action, Cashman Action,
2 Bemis Action, and Eavenson Action.

3 **L. Named Plaintiffs.** "Named Plaintiffs" means Yolanda Garza, Acuna, P.T.,
4 Gerald H. Bemis, Sr., D.C., Mark J. Eavenson, D.C., d/b/a Multi-Care Specialists, P.C., and
5 Macaela Cashman.

6 **M. Nationwide/Allied.** "Nationwide/Allied" means the named defendants in the
7 Lawsuits, Nationwide Mutual Insurance Company, Nationwide Property and Casualty
8 Insurance Company, Nationwide General Insurance Company, Allied Property and
9 Casualty Insurance Company, Allied Insurance and AMCO Insurance Company, and each
10 and all of their present and former affiliates, related companies, parent companies,
11 subsidiaries, predecessors, successors or assigns, whether or not named herein, including
12 Nationwide Mutual Fire Insurance Company, Nationwide Insurance Company of America,
13 Nationwide Life Insurance Company, Nationwide Assurance Company f/k/a Colonial
14 Insurance Company, Nationwide Indemnity Company, Nationwide Corporation,
15 Nationwide Insurance, Nationwide Affinity Insurance Company of America, National
16 Casualty Company, Nationwide International Underwriters, Nationwide Lloyds, Depositors
17 Insurance Company, CalFarm Insurance Company, Colonial County Mutual Insurance
18 Company, Farmland Mutual Insurance Company, Lone Star General Agency, Inc., Allied
19 Group, Inc., Allied General Agency Company, Colonial Insurance Company of California,
20 Colonial Insurance Company of Wisconsin, Titan Indemnity Company, Titan Insurance
21 Company and each and all of their respective past, present or future officers, directors,
22 associates, stockholders, controlling persons, representatives, employees, attorneys,
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1 accountants, financial or investment advisors or agents, heirs, executors, trustees, general or
2 limited partners or partnerships, personal representatives, estates or administrators.

3 **N. Plaintiffs.** "Plaintiffs" means any of the Class Representatives, including
4 Yolanda Garza, Acuna, P.T., Gerald H. Bemis, Sr., D.C., Mark J. Eavenson, D.C., d/b/a
5 Multi-Care Specialists, P.C., and Macaela Cashman, and the members of the Settlement
6 Class, together with their heirs, successors, assigns, attorneys, agents, and representatives.

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8 **O. Released Claims.** "Released Claims" means Released Claims as defined in the
9 Release attached as Appendix "B" to this Final Order and Judgment.

10 **P. Released Parties.** "Released Parties" means Released Parties as defined in the
11 Release attached as Appendix "B" to this Final Order and Judgment.

12 **Q. Stipulation.** "Stipulation" means the Stipulation of Class Action Settlement
13 entered into by, between, and among Yolanda Garza, Acuna, P.T., Gerald H. Bemis, Sr.,
14 D.C., Mark J. Eavenson, D.C., d/b/a Multi-Care Specialists, P.C., and Macaela Cashman,
15 and Nationwide/Allied filed with the Courts.

16
17 **R.** To the extent not defined above, any terms used herein shall have the meanings
18 as set forth in the Stipulation.

APPENDIX B**RELEASE**

The Named Plaintiffs, and all other Settlement Class Members who have not been recognized as excluded from the Settlement Class, hereby expressly acknowledge and agree, on their own behalf and on behalf of each of their respective heirs, trustees, executors, administrators, principals, beneficiaries, representatives, agents, and present and former officers, directors, employees, insureds, attorneys, contractors, predecessors, successors, parent companies, subsidiaries, divisions, affiliates, and assigns, and/or anyone claiming through them or acting or purporting to act for them or on their behalf, that they release and discharge the Released Parties of and from all Released Claims and shall not now or hereafter initiate, maintain, or assert against any of the Released Parties, either directly or indirectly, derivatively, on their own behalf, on behalf of the Settlement Class, or on behalf of any other person or entity any right, liability, claim, or cause of action arising out of or relating to the Released Claims.

"Released Parties" means Nationwide/Allied, any person or entity covered or insured by Nationwide/Allied, and any third party that provided medical bill review or audit services to Nationwide/Allied.

"Released Claims" mean and include any and all rights, claims for relief or causes of action pursuant to any theory of recovery, including but not limited to claims based in contract or tort, common law or equity, and federal, state, or local law, statute, ordinance, rule or regulation, whether known or unknown, alleged or not alleged in the Lawsuits, suspected or unsuspected, contingent or matured, which the Named Plaintiffs or any Settlement Class Member had, now has, or may in the future have with respect to any conduct, act, omissions, facts, matters, transactions, or oral or written statements or occurrences on or prior to November 8, 2007 involving, based on, arising out of, related to, or in any way connected with, directly or indirectly, the price or sum allowed or paid for medical or rehabilitative services or products, including without limitation reduction of amounts allowed or paid based upon reasonableness, usual and customary charges, geographical scope, and PPO or other negotiated or contractual pricing arrangements whether direct or through third parties.

Included as Released Claims, by example and without limitation, are claims for breach of contract, breach of the duty of good faith and fair dealing, negligence, bad faith, willful and wanton conduct, breach of statutory duties, actual or constructive fraud, intentional or negligent misrepresentations, fraudulent inducement, outrageous conduct, statutory and consumer fraud, breach of fiduciary duty or quasi-fiduciary duty, unfair or deceptive business or trade or insurance acts or practices, insurance premium overcharges or a refund or rebate of premiums, anticipatory repudiation, restitution, rescission, reformation, injunctive or declaratory relief, claims for compensatory, consequential, and punitive or exemplary damages, damages based on statutory violations, remedies, or penalties, damages in excess of actual damages, damages for physical or bodily injury, or other injuries to person, property, or psyche, damages for emotional distress or mental anguish, lost wages, loss of income, attorneys' fees, interest, costs, penalties, and any other damages.

1 Expressly excluded from Released Claims are charges reduced or denied based upon:
 2 coverage denials, exhaustion of policy limits, application of a government sanctioned fee
 3 schedule, necessity or relatedness of treatment, independent medical examination, peer
 4 review, and insured deductible, co-pay or other contribution requirements under applicable
 5 law or policy terms.

6 The Named Plaintiffs and the Settlement Class Members expressly acknowledge that
 7 they are familiar with principles of law such as Section 1542 of the Civil Code of the State
 8 of California, which provides:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
 10 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
 11 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
 12 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
 13 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
 14 HER SETTLEMENT WITH THE DEBTOR.

15 To the extent that, notwithstanding the choice of law provisions in the Stipulation,
 16 California or other law may be applicable, the Named Plaintiffs and the Settlement Class
 17 Members hereby expressly agree that the provisions, rights, and benefits of Section 1542
 18 and all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction
 19 which may be applicable herein, are hereby knowingly and voluntarily waived and
 20 relinquished by the Named Plaintiffs and the Settlement Class Members to the fullest extent
 21 permitted by law solely in connection with unknown claims constituting Released Claims,
 22 and the Named Plaintiffs and the Settlement Class Members hereby agree and acknowledge
 23 that this is an essential term of this Release. In connection with this Release, the Named
 24 Plaintiffs and the Settlement Class Members acknowledge that they are aware that they may
 25 hereafter discover claims presently unknown or unsuspected, or facts in addition to or
 26 different from those which they now know or believe to be true with respect to the matters
 released herein. Nevertheless, the Named Plaintiffs and the Settlement Class Members
 acknowledge that a portion of the consideration received herein is for a release with respect
 to future damages and complaints, whether resulting from known injuries and consequences
 or from unknown injuries or unknown consequences of known or unknown injuries and
 state that it is the intention of the Named Plaintiffs and the Settlement Class Members in
 executing this Release fully, finally, and forever to settle and release all matters, known or
 otherwise, and all claims relating thereto, which exist, hereafter may exist, or might have
 existed (whether or not previously or currently asserted in any action) constituting Released
 Claims.

Medical provider Settlement Class Members, on their own behalf and on behalf of
 each of their respective heirs, trustees, executors, administrators, principals, beneficiaries,
 representatives, agents, and present and former officers, directors, employees, insureds,
 attorneys, contractors, predecessors, successors, parent companies, subsidiaries, divisions,
 affiliates, and assigns, and/or anyone claiming through them or acting or purporting to act
 for them or on their behalf, release and discharge each insured Settlement Class Member
 from whom the medical provider Settlement Class Member received valid written

1 assignments of the claims that fall within the scope of Released Claims pursuant to this
2 Release, and agree not to initiate or to discharge or dismiss with prejudice, as appropriate,
3 any balance billing, credit reporting, collection activities, liens, actions or other proceedings
4 arising out of or relating to such Released Claims, whether or not the medical provider
5 Settlement Class Member has been paid in full for its charges.

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Nothing in this Release shall preclude any action to enforce the terms of the Settlement
Agreement, including participation in any of the processes detailed herein.

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**APPENDIX "C":
OPT OUT LIST ATTACHED**

Garza Action (Cause No. 02-06322-E)
Cashman Action (Case No. CIV-05-415-TUC-RCC)

Requests for Exclusion/Opt Out List

Exclusion Number	Claimant ID	Name	Address	City	State	Zip	Tax ID	Claimant Type
EX000001	8179715	QUICK CARE CLINIC	219 W BEL AIR AVE STE 2	ABERDEEN	MD	21001	522309318	Provider
EX000002	10745311	CAROLYN R. LMT TUSTIN	726 TRUMBULL AVE SE	WARREN	OH	44484		Provider
EX000003	906326	LARRY ULBERG						Patient
EX000004	3287644	KATHLEEN MCCARTHY						Patient
EX000005	1054132	LOUIS ALTHOUSE						Patient
EX000006	1100747	PAUL LEATHERMAN						Patient
EX000007	3617298	CAROLYN A MANSFIELD						Patient
EX000008	56366	JANET JONES						Patient
EX000009	1596892	LORNA HEDINGER						Patient
EX000010	6473617	MARY DAVIS						Patient
EX000011	19238791	JERRY L KIRVES	57 TOWNE PARK DR	LAWRENCEVILLE	GA	30044	382617193	Provider
EX000012	13198046	GARY REID DC	2009 AERO WAY STE 101	MEDFORD	OR	97504	900017199	Provider
EX000013	14644658	LANGEL CHIROPRACTIC, PC	5907 ASHWORTH RD	W DES MOINES	IA	50266	421484053	Provider
EX000014	2803371	LANGEL, RODNEY D	5907 ASHWORTH RD	W DES MOINES	IA	50266	421484053	Provider
EX000015	2299525	NORTHLAND ANESTHESIOLOGY INC.	2800 CLAY EDWARDS DR	N KANSAS CITY	MO	64116	431795940	Provider
EX000016	2304038	PAIN SOURCE SOLUTIONS INC	2800 CLAY EDWARDS DR	KANSAS CITY	MO	64116	200547130	Provider
EX000017	99997793	ROBERT WRIGHT MD	PO BOX 7391	KANSAS CITY	MO	64116		Provider
EX000018	99997816	GREGORY WIDRIG MD	PO BOX 7391	KANSAS CITY	MO	64116		Provider
EX000019	99997830	JOSEPH TAYLOR	PO BOX 7391	KANSAS CITY	MO	64116		Provider
EX000020	99997847	MICHAEL SEDLACEK MD	PO BOX 7391	KANSAS CITY	MO	64116		Provider
EX000021	99997854	PAUL KRUG, MD	PO BOX 7391	KANSAS CITY	MO	64116		Provider
EX000022	99997861	EMAD ISRAEL MD	PO BOX 7391	KANSAS CITY	MO	64116		Provider
EX000023	99997755	BRUCE DURKEE MD	PO BOX 7391	NORTH KANSAS CITY	MO	64116		Provider
EX000024	99997762	LARRY DAVIS DO	PO BOX 7391	NORTH KANSAS CITY	MO	64116		Provider
EX000025	99997779	JOHN A CILIBERTI DO	PO BOX 7391	KANSAS CITY	MO	64116		Provider
EX000026	99997786	SEAN CLINEFELTER MD	PO BOX 7391	NORTH KANSAS CITY	MO	64116		Provider
EX000027	99997809	PATRICK GRIFFITH MD	PO BOX 7391	NORTH KANSAS CITY	MO	64116		Provider
EX000028	99997823	PATRICIA YOUNG	PO BOX 7391	NORTH KANSAS CITY	MO	64116		Provider
EX000029	4036777	JUNE COX						Patient
EX000030	4346647	LISA BECKS						Patient
EX000031	4323839	KYLEE M EDWARDS						Patient
EX000032	7325991	WILLIAM STRINDEN	116 CHRISTIE DR	LUFKIN	TX	75904	752717405	Provider
EX000033	4545958	MICKEY L MARTIN						Patient
EX000034	144957	JOHN POST						Patient
EX000035	329675	MICHELLE STUCKEY						Patient
EX000036	1127935	JEFFERY VERNOR						Patient
EX000037	841573	DAN ULRICH						Patient
EX000038	8170057	RITA J STEFFEY	120 W JACKSON ST	SHELBYVILLE	IN	46176	351416306	Provider
EX000039	4247548	BENJAMIN E HARGROVE						Patient
EX000040	2229348	THE KANSAS CITY NEUROSURGERY GROUP, LLC	2750 CLAY EDWARDS DR STE 410	KANSAS CITY	MO	64116	431846258	Provider
EX000040	2219110	THE KANSAS CITY NEUROSURGERY GROUP, LLC	4400 BROADWAY ST STE 510	KANSAS CITY	MO	64111	431846258	Provider
EX000041	204832292	PAUL CAMARATA MD	4400 BROADWAY	KANSAS CITY	MO	64111		Provider
EX000042	204832308	ERIC FLORES MD	4400 BROADWAY	KANSAS CITY	MO	64111		Provider
EX000043	204832315	PHILLIP HYLTON MD	4400 BROADWAY	KANSAS CITY	MO	64111		Provider

Private information for patients and some individual providers has been redacted for public filing.
The information is available to the Court upon request.

Garza Action (Cause No. 02-06322-E)
Cashman Action (Case No. CIV-05-415-TUC-RCC)

Requests for Exclusion/Opt Out List

Exclusion Number	Claimant ID	Name	Address	City	State	Zip	Tax ID	Claimant Type
EX000044	204832322	STEPHEN REINTJES MD	4400 BROADWAY	KANSAS CITY	MO	64111		Provider
EX000045	204832339	TIMOTHY STEPP	4400 BROADWAY	KANSAS CITY	MO	64111		Provider
EX000046	204832346	DARREN LOVICK	4400 BROADWAY	KANSAS CITY	MO	64111		Provider
EX000047	80446	GARY DYESS						Patient
EX000048	849760	DON GOODWATER						Patient
EX000049	1159455	STATIA HAMEL						Patient
EX000050	3869345	JOSEPHINE WHEELER						Patient
EX000051	22163	DAVID PETERSON						Patient
EX000052	3878118	ALICE R SPEARS						Patient
EX000053	522182	GENE RINCKER						Patient
EX000054	20443771	EILEEN MUZINA						Patient
EX000055	1215137	EDMUND GROGAN						Patient
EX000056	1331226	JENNIFER GROGAN						Patient
EX000057	19134543	AARON C FERGUSON	14205 WEEPING WILLOW DR APT 32	SILVER SPRING	MD	20906	201390162	Provider
EX000058	1215465	MICHELLE PORTER						Patient
EX000059	1608243	JOHN MCGOWEN						Patient
EX000060	1494860	THOMAS MILLENKAMP						Patient
EX000061	1326369	CORY CUBERWORTH						Patient
EX000062	226547	RONALD DALRYMPLE						Patient
EX000063	1147575	DEBRA DOWDY						Patient
EX000064	14048210	CONCORD IMAGING CENTER	2 1/2 BEACON ST STE 7	CONCORD	NH	3301	20307259	Provider
EX000065	8022370	UNIVERSITY HOSPITAL	1350 WALTON WAY	AUGUSTA	GA	30901	581581103	Provider
EX000065	1699784	UNIVERSITY HOSPITAL/OCCUPATIONAL HEALTH	1350 WALTON WAY	AUGUSTA	GA	30901	581581103	Provider
EX000066	3904671	DEAANNA R BRUCE (F.K.A.)						Patient
EX000067	204832681	RETINA INSTITUTE OF VIRGINIA	8700 STONY POINT PARKWAY	RICHMOND	VA	23235	541950215	Provider
EX000068	6965518	CENTRAL DUPAGE HOSPITAL	DEPT 4698	CAROL STREAM	IL	60122	362513909	Provider
EX000068	1908350	CENTRAL DUPAGE HOSPITAL	25 N WINFIELD RD	WINFIELD	IL	60190	362513909	Provider
EX000069	16483620	ERIN GRABE	1211 W MAIN ST	MARSHALLTOWN	IA	50158	480792720	Provider
EX000070	80187	CHARLES MORRIS						Patient
EX000071	49122	BARBARA MARCHIO						Patient
EX000072	4519928	SHERRIE JONES						Patient
EX000073	1156201	TOM TOTTE						Patient
EX000074	204832728	QUEST DIAGNOSTICS INCORPORATED	3 GIRALDA FARMS	MADISON	NJ	7940		Provider
EX000075	1632392	NATHAN S CONLEE CHIRO PHYS	3020 N COUNTRY CLUB RD	TUCSON	AZ	85716	860677185	Provider

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